

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RITA FIFE)	
Claimant)	
VS.)	
)	
BOEING MILITARY AIRPLANES)	Docket No. 162,556
Respondent)	
AND)	
)	
AETNA CASUALTY & SURETY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

ON the 29th day of June, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge John D. Clark, dated June 14, 1994, came on for oral argument.

APPEARANCES

Claimant appeared by and through her attorney, Robert R. Lee of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Frederick L. Haag of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Vincent Bogart of Wichita, Kansas. **ENDFIELD**

RECORD

The record considered for purposes of this appeal consisted of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the transcript of the preliminary hearing held on June 14, 1994, before Administrative Law Judge John D. Clark and the exhibits attached thereto.

ISSUES

The Preliminary Hearing of June 14, 1994, was held pursuant to respondent's motion to terminate medical and temporary total disability benefits and objection to the vocational rehabilitation plan on the basis that it would not restore claimant to a comparable wage. The Administrative Law Judge terminated all benefits and took under advisement the issue relating to vocational rehabilitation. Claimant appeals, raising the following issues:

- (1) Whether the Administrative Law Judge exceeded his jurisdiction in terminating benefits at the Preliminary Hearing.
- (2) Whether the Administrative Law Judge exceeded his jurisdiction in taking the issue of vocational rehabilitation under advisement.

As a part of this appeal, the Workers Compensation Appeals Board must also consider whether it has jurisdiction to review this matter pursuant to K.S.A. 44-534a and K.S.A. 44-551.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

- (1) The Administrative Law Judge did not exceed his jurisdiction in terminating medical and temporary total disability benefits for purposes of preliminary hearing only.

The appeal from the Administrative Law Judge's Order terminating all temporary benefits is not an appealable order. K.S.A. 44-551 limits the jurisdiction of the Appeals Board on appeals from preliminary hearing orders to review of only those cases where it is alleged that the Administrative Law Judge has exceeded his or her jurisdiction in granting the relief requested. K.S.A. 44-534a lists certain types of findings which may be considered jurisdictional and, therefore, subject to review. The decision in this case is not one of those specifically enumerated as being jurisdictional and the decision by the Administrative Law Judge does not exceed his authority. The Appeals Board accordingly lacks the jurisdiction to review the June 14, 1994, Order by the Administrative Law Judge terminating benefits.

- (2) The Administrative Law Judge exceeded his jurisdiction in taking under advisement the issue of vocational rehabilitation.

K.S.A. 1992 Supp. 44-534a empowers the Administrative Law Judge to adjudicate issues concerning the furnishing of medical treatment, payment of temporary total disability benefits, and any matter relative to the furnishing of vocational rehabilitation. The issue of whether the Administrative Law Judge exceeded his jurisdiction and authority by failing to adjudicate an issue before him was before the Appeals Board in Hawk v. Rubbermaid-Winfield, Inc., etal, Docket No. 180,303 (decided March 24, 1994). In that Order, we said:

"The Appeals Board finds that K.S.A. 44-534a requires the Administrative Law Judge to make an initial determination of the issues pertaining to compensability and entitlement to benefits at the preliminary hearing stage of the proceedings. To find otherwise is to thwart the intent and purpose of the Act to provide a means for prompt, initial determination of those issues."

Absent specific circumstances requiring the taking of a matter under advisement in order to comply with other statutorily mandated requirements, K.S.A. 44-534a requires a decision to be rendered within five days of the conclusion of the hearing. The record in this case does not contain any justification for the issue of vocational rehabilitation being taken "under advisement until a settlement conference is held." Accordingly, this case is remanded to the Administrative Law Judge for an immediate resolution of that issue.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this proceeding be remanded for preliminary hearing purposes to the Administrative Law Judge for a prompt finding and adjudication regarding the issue of vocational rehabilitation. As to all other issues, the June 14, 1994, Order of Administrative Law Judge John D. Clark remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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John D. Clark, Administrative Law Judge
George Gomez, Director